take, in order to prevent a lapsed legacy. The weight of authority in similar devise cases is that the substituted heir takes free. *Powers* v. *Morrison*, 88 Tex. 133. The statute should have the same effect in the case of a legacy. *Carson* v. *Carson's Executor*, 1 Met. (Ky.) 300.

MUNICIPAL CORPORATIONS — ACTIONS BY MUNICIPAL CORPORATIONS — ESTOPPEL BY LACHES. — The plaintiff company maintained uninterrupted and exclusive use of streets in an unused portion of the city for over forty years, and had invested large sums which would be lost if the street should be reopened. *Held*, that the city is equitably estopped from claiming that the plaintiff's structures constituted an obstruction of the street. *City of Chicago* v. *Illinois Steel Co.*, 82 N. E. 286 (Ill.).

No estoppel arises when both parties are equally well informed. *Attkisron* v. *Plum*, 50 W. Va. 104. In the principal case, therefore, what is actually laches and adverse possession is treated as an estoppel because of the fancied injustice in ousting one who has knowingly occupied and improved municipal property. The better doctrine is that one who encroaches on the public domain without affirmative justification does so at his peril. *Barter* v. *Commonwealth*, 3 Pa. 253; *Lawrenceburg* v. *Wesler*, 10 Ind. App. 153. But decisions similar to the present case are frequent. *N. Y., N. H. & H. R. R.* v. *New Haven*, 46 Conn. 257. Such cases seem but a logical conclusion from the doctrine that municipal corporations are not exempt, as is the state, from the operation of the statute of limitations and its equitable counterpart, laches. *Boone County* v. *Burl., etc., R. R.*, 139 U. S. 684. But this discrimination against the rights of smaller sections of the public seems unjustifiable. *Cf.* 20 HARV. L. REV. 644. The courts, however, should no more support a municipality in unconscionable proceedings than an individual; so, where justice requires it, a public right may be lost by estoppel. But in the present case the city made no representations on which the plaintiff could rely, and hence the basis of true estoppel is lacking.

MUNICIPAL CORPORATIONS — ASSESSMENTS FOR LOCAL IMPROVEMENTS — ASSESSMENT OF RAILROAD RIGHT OF WAY. — Under statutory provision a city council ordered a sidewalk to be constructed, and assessed the abutting property owners, including a railroad corporation holding an abutting right of way. The corporation objected that its property was not benefited by the improvement. *Held*, that the assessment by the city council is conclusive as to what property is benefited. *Northern Pac. R. R. Co.* v. *City of Seattle*, 91 Pac. 244 (Wash.).

Whether or not a railroad right of way is subject to special assessment is a disputed question. See 2 ELIOTT, RAILROADS, § 786. The power to assess is usually granted by statutes which authorize the municipality to declare what property is benefited by an improvement and to assess accordingly. The basis of this taxation is benefit to the particular property assessed, aside from the general benefit to the community. It is obviously difficult to find sufficient benefit to a railroad right of way by most improvements of adjoining streets to justify a special assessment. But such improvements as the establishment of contiguous drainage are clearly of benefit to a right of way. *Louisville, etc., R. R. Co.* v. *State*, 122 Ind. 443. And an assessment has been held constitutional where there was only a possibility of future benefit to the right of way. *Louisville & Nashville R. R. Co.* v. *Barber Asphalt Paving Co.*, 197 U. S. 430. The courts will properly go to great lengths in supporting a legislative finding of benefit. But to preclude the courts from any review of the legislative determination would open the door to arbitrary and unreasonable confiscation of property by a municipality, and on this ground the decision in the present case cannot be supported. See *Allegheny City* v. *West Pa. R. Co.*, 138 Pa. St. 375; 2 DILL., MUN. CORP., § 761.

PARTNERSHIP — RIGHTS AND REMEDIES OF CREDITORS — OSTENSIBLE PARTNERSHIP. — A carried on business under the firm name of A & B. B was an infant. A separate creditor of A attached assets of the ostensible firm,

which were then claimed by a firm creditor. *Held*, that the firm creditor is entitled to priority over the separate creditor as to these assets. *Codville Georgeson Co.* v. *Smart*, 10 Ont. W. Rep. 466.

In the distribution of firm assets a firm creditor is entitled to priority over an individual creditor of one member of the firm, though the other member is an infant. *Lovell* v. *Beauchamp*, [1894] A. C. 607; see 8 HARV. L. REV. 361. The rule of priority has been held to apply in the case of the bankruptcy of an ostensible firm. *Ex parte Hayman*, 8 Ch. D. 11; *Kelly* v. *Scott*, 49 N. Y. 595. The English case distinctly puts this on the statutory ground of reputed ownership, which could not apply to the principal case where there is no bankruptcy. The preference of firm creditors is said to result from the equitable lien which each partner has on the firm assets. *Case* v. *Beauregard*, 99 U. S. 119. But in the case of an ostensible partnership there can be no such lien in fact; and no good reason appears why the separate creditors should be estopped from denying its existence. See 10 HARV. L. REV. 49. There are accordingly some cases which hold that a prior attaching creditor, whether he gave credit to the ostensible firm or to the actual member personally, gets a preference over a subsequently attaching creditor. *Himmelreich* v. *Shaffer*, 182 Pa. St. 201.

PATENTS — INFRINGEMENT — COMPENSATORY DAMAGES IN EQUITY. — On January 27, 1902, the defendants, after several years of unlicensed use, abandoned two machines which infringed the complainant's patent. On November 1, 1901, the complainant established with third persons a general uniform license rate, payable quarterly, the first instalment due December 10, 1901. No evidence was offered of any profits accruing to the defendants from the infringement. *Held*, that the complainant may recover the amount of one quarter's license for two machines, with interest from January 27, 1902. *Diamond Stone Sawing Mach. Co.* v. *Brown*, 155 Fed. 753 (Circ. Ct., E. D. N. Y.).

The federal courts, in exercising equity jurisdiction over patent infringements, formerly measured the recovery solely by the defendant's profits. See *Root* v. *Railway Co.*, 105 U. S. 189, 194. However, U. S. Rev. Stat., § 4921, enlarges the equity remedy, by entitling the complainant to recover the damages he has sustained "in addition to the profits to be accounted for by the defendant." Under this provision, compensatory damages fixed by license fees were awarded a complainant, it appearing that the infringer obtained no profits. *Marsh* v. *Seymour*, 97 U. S. 348. The present decision goes one step further, awarding compensatory damages without regard to the defendant's profits. The license fee is the accepted measure of the complainant's loss, but only where such fee is general and uniform, and established prior to the infringement. See *Rude* v. *Westcott*, 130 U. S. 152, 165. Since the license fee here was not established until November 1, 1901, and was the only evidence of the complainant's loss, the court rightly refused damages for infringements perpetrated before that date. Where license fees are the measure of damages, the courts have awarded interest from the time such fees fell due. *Locomotive Safety Truck Co.* v. *Penn. R. R. Co.*, 2 Fed. 677; *McNeely* v. *Williames*, 96 Fed. 978. The present decision is a departure from these cases.

PROXIMATE CAUSE — INTERVENING CAUSES — OWNER INJURED IN SAVING PROPERTY ENDANGERED BY DEFENDANT'S NEGLIGENCE. — A spark from the defendant's engine ignited conbustible materials allowed by the defendant to collect along its track. The plaintiff's intestate, seeing her buildings in danger, tried to extinguish the fire and, though using due care, was burned to death. *Held*, that the plaintiff can recover, since the defendant's negligence was the proximate cause of the death. *Illinois Central R. R. Co.* v. *Siler*, 82 N. E. 362 (Ill.).

For a discussion of the principles involved, see 16 HARV. L. REV. 379.

RECEIVERS — APPOINTMENT BY STATE COURT AFTER APPOINTMENT BY FEDERAL COURT. — New Jersey creditors of a New York corporation secured